IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6106 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

EXECUTIVE ENGINEER

Versus

DILIPSINH C. CHAVDA

Appearance:

1. Special Civil Application No. 6106 of 1994

Mr. H.C. Patel, AGP for Petitioner No. 1-2

MR JS BRAHMBHATT for Respondent No. 1-3

NOTICE SERVED for Respondent No. 1,4-18

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 25/10/2002

ORAL JUDGEMENT

Hon'ble Mr. Justice D.S.Sinha, Chief Justice of the High Court of Gujarat has delivered the Speech on the occasion of the Inaugural Ceremony of the District Court Complex at Bharuch on Friday, the 11th October, 2002. Following paragraph of the speech of the Hon'ble Chief Justice which is relevant and important is reproduced as under:

" It is to be remembered that the grandeur, splendour and magnificence of the structure of the building, its architectural marvel, opulence of other infrastructure provided therein will be of no consequence, unless the temple of justice is vibrant and animated, radiating the spirit of justice.

The most vital constituents of every temple are the Presiding Deity, Poojari and the worshipper. In the Temple of Justice, the Judges are the Presiding Deities, representing the Goddess of Justice, the Members of the Bar are the Poojaries and the litigants are worshippers, visiting it in the quest of and clamouring for inexpensive or moderately expensive, objective, dispassionate, pure and unsullied justice, dispensed speedily, absolutely free from partisanship and wedded to fidelity to truth, unambiguously reflecting that hook and crook played no role. At this juncture, it is tobe noted that calibre and impeccable intellectual integrity of the men engaged in and entrusted with the task of operating the apparatus of justice delivery system for dispensing justice objectively and without fear and favour, affection or ill will, is utmost important. Only then and then alone, public faith in our judiciary shall remain intact.

On this historic occasion, we must also remind ourselves that worshippers in the temple of justice, I mean the litigants for whom exists the judiciary, can no longer be cajoled by high flown rhetorics, empty catch all phrases and indigestible verbiage. All of us must strive to make collective endeavour to devise tools and strategies to prevent desperation of the litigants from reaching its crescendo lest they are compelled to suborn or resort to violence.

May I appeal to you the members of the judicial fraternity and them embers of the Bar to foster and inoculate the culture of devotion to the cause of justice leading to the cherished Constitutional goal of maintaining the rule of law and securing justice, social, economic and political, to the people of India and contribute your whole might to the redemption of the pious constitutional pledge of promotion of their

welfare. "

Heard learned Assistant Government Pleader Mr. H.C. Patel for the petitioner and Mr. J.S. Brahmbhatt, learned advocate for the respondents. In this petition, the petitioner has challenged the order passed by the Labour Court, Godhra in Miscellaneous Application NO. 30 of 1993 dated 15th January, 1994 filed by the respondents which was allowed by the labour court with a direction to the petitioner to engage the respondents workmen as per the seniority and not to disturb and defeat their legal rights to receive any benefits and not to adopt unfair labour practice and to implement the Government Resolution dated 17th October, 1988 by giving benefits thereof to the workmen, if at all the workmen are entitled for the benefits of the said Government Resolution.

Brief facts of the present petition are to the effect that the group of 18 workmen working under the petitioner approached the labour court, Godhra by filing application under section 25(T) relating to Chapter V of the Industrial Disputes Act, 1947. It was the grievance of the respondents workmen that the establishment of the petitioner was adopting unfair labour practice and the petitioner has not been paying the benefits available to the respondents as per the Government Resolution dated 17th October, 1988 and the petitioner establishment was also disturbing their seniority. Reply to the said application was filed by the petitioner at Exh. 5 before the labour court and the averments made by the workmen in the said application were denied by the petitioner, in response to the notice issued by the labour court. Thereafter, the matter was heard by the labour court. Before the labour court, no evidence was led by either side. In support of the application, an affidavit was filed by the workman at Exh. 2 and the contents of the said affidavit were not challenged by the petitioner before the labour court. Not only that, the petitioner has also not produced any documents for controverting the contentions raised by respondents in their application as well as the affidavit. Thus, before the labour court, except the application filed by the workmen, affidavit in support of the said application and the reply to the said application at Exh. 5, no other material was there.

At the time of issuing rule, this court has granted interim relief in terms of paragraph 9(B) of the petition by order dated 27th April, 1994. The labour court, after considering the material on record as well as the submissions made by the learned advocates for the

respective parties, directed the petitioner to engage the respondents workmen as per the seniority and not to disturb and defeat their legal rights to receive any benefits and not to adopt unfair labour practice and the to implement the Government Resolution dated 17th October, 1988 by giving benefits thereof to the workmen, if at all the workmen are entitled for the benefits of the said Government Resolution by order dated 15.1.1994 and, therefore, the petitioner has filed the present petition before this court.

Learned AGP Mr. Patel appearing for the petitioner has submitted that the labour court was having no jurisdiction to pass such an order under the provisions of the Industrial Disputes Act, 1947. He has further submitted that there is no provision under the Industrial Disputes Act, 1947 empowering the labour court to pass such an order and, therefore, the order passed by the labour court is without jurisdiction. Save and except the contention of jurisdiction, no other contention has been raised by Mr. Patel, learned AGP for the petitioner.

On the other hand, learned advocate Mr. J.S.Brahmbhatt appearing for the respondents has submitted that the contention of jurisdiction raised by the petitioner before this court in this petition was not raised by the petitioner before the labour court in its reply at Exh. 5. He has also submitted that no such submissions were made by the petitioner before the labour court during the course of hearing. He also submitted that the petitioner being the State Authority, is supposed to act in accordance with law and to restrain itself from adopting the unfair labour practice but the petitioner was not acting in accordance with law and was adopting unfair labour practice by disturbing the seniority of the respondent workman and also by not extending the benefits of the Government Resolution dated 17th October, 1988 and thereby was making an attempts to defeat the legal and statutory rights of the respondent workmen and, therefore, the respondents workmen were constrained to approach the labour court by filing application under section 25(T) of the Industrial Disputes Act, 1947 and, therefore, this petition should not be entertained by this court. It was also submitted by him that before the labour court, no documentary evidence was produced by the petitioner and no counter affidavit was filed by the petitioner for controverting the contents of the affidavit filed by the workmen in support of the application under section 25(T) of the I.D. Act and no oral evidence was led by the petitioner before the labour court and, therefore, the labour court

was right in believing the averments made by the workmen in their application as supported by the affidavit Exh. 2. According to him, the labour court has not committed any error in passing such an order and, therefore, this court should not interfere with such order. Alternatively, it was submitted by him that even if the labour court was not having the jurisdiction to entertain such an application, even then, since the ultimate out come of the application i.e. impugned order is reasonable, just and proper, therefore, this court should not interfere with such just and valid order as, otherwise, it would result into miscarriage of justice.

I have considered the submissions made by the learned advocates for the parties. I have also perused the impugned order made by the labour court. There is substance in the sole contention raised by Mr. H.C. Patel that the labour court is not having jurisdiction to entertain such an application. The law on this point is settled by various decisions of this court as well as the apex court. There are various provisions made in the Industrial Disputes Act, 1947 which give powers to the labour court to entertain the applications of different nature. It is not open for the labour court and the labour court cannot entertain straight away / direct application filed by the workmen challenging the dismissal, discharge and termination. For that, machinery has been provided under the I.D. Act, 1947 for filing such application before the Assistant Commissioner of Labour and, thereafter, conciliation proceedings are being initiated and ultimately, if there is no possibility of any settlement, then, the industrial dispute relating to dismissal, discharge and termination is referred for adjudication to the labour court or the industrial tribunal under section 10(1) of the I.D. Act, 1947 and when the rights are crystallized, the workman can file direct application on the basis of the preexisting right based upon the settlement, award and according to the service conditions and for other statutory benefits under section 33(C) of the I.D.Act, 1947. When the industrial dispute is pending before the Conciliation Officer, labour court or the industrial tribunal as the case may be, the workman can file complaint under section 33-A of the Industrial Disputes Act, 1947. Thus, in absence of the reference, complaint under sec. 33-A of the I.D. Act, 1947 cannot be filed directly by the workman before the Conciliation Officer, labour court or the industrial tribunal as the case may be. Likewise, in absence of the preexisting rights based upon the settlement, award etc. and when the rights are not crystallized, the workman cannot file recovery

proceedings directly before the labour court. Thus, in view of the above provisions of the I.D. Act, 1947, there is no scope to file any application straightaway/directly before the labour court except under section 33-C and otherwise pendency of reference for filing of the complaint under section 33-A of the I.D. Act is also a condition precedent. Admittedly, application under section 25-T of the I.D. Act was directly filed by the workmen concerned without pendency of any reference. Therefore, in absence of any pending reference, such an application under section 25-T of the I.D.Act, 1947 cannot be entertained by the labour court and the labour court is having no jurisdiction to entertain such direct application in absence of pendency of the reference. In view of this legal position in respect of the application filed by the workmen concerned before the labour court, Godhra, I agree with the submission made by the learned AGP Mr. Patel that the labour court was having no jurisdiction to entertain such direct application under section 25-T of the Industrial Disputes Act, 1947.

Considering the alternative submission made by the learned advocate for the respondents workmen, I am examining this matter from different angle. One fact is clear that the labour court is not having jurisdiction to entertain such an application but after entertaining such application, ultimately, whether the order passed by the labour court is quite just, reasonable and proper or not? I am examining this aspect because I am of the view that if the ultimate out come of such application is just, reasonable and proper, then, in such circumstances, whether it is necessary for this court to interfere with such order while exercising the powers under Article 226 and/or 227 of the Constitution of India.

Considering the substance of the matter, ultimately, while approaching the labour court, 18 workmen prayed before the labour court that the petitioner establishment be restrained from adopting unfair labour practice. Such prayer is amounting to claim of and protection of statutory right. The Industrial Disputes Act, 1947 is restraining the employer from adopting the unfair labour practice and as per my view, even otherwise, being the State Authority, the petitioner is supposed to act in accordance with law and to restrain itself from adopting unfair labour practice and to act as a model employer. After all, the labour court has directed the petitioner to engage the workmen according to their seniority, not to adopt unfair labour practice, not to disturb and defeat their legal rights

and if any workman is entitled for the benefit of the Government Resolution dated 17th October, 1988, same should be given to such workman. Therefore, according to my opinion, the labour court has not adjudicated any issue on merits but has simply directed the petitioner, to act in accordance with law and if any legal right is enjoyed by the workmen, then to protect such right and to give benefits to the workman as per the Government Resolution dated 17th October, 1988 if they are entitled for such benefits. In view of these aspects, according to my opinion, ultimate out come of the application under section 25-T of the I.D.Act, 1947 i.e. impugned order passed by the labour court is just, reasonable and proper and, therefore, in such circumstances, though the labour court is not having jurisdiction to pass such order or direction even then, if the ultimate order is reasonable, just and proper, then, this court may not exercise its extra ordinary powers under Article 226 and/or 227 of the Constitution of India. This view has been taken by the Delhi High Court in case of Management of The Statesman Ltd. and Lt. Governor & Others reported in 1995 (3) LLJ page 648 wherein Hon'ble Mr. Justice B.N. Kirpal as then he was, on 28th July, 1987 has observed as under in para 11 of the judgment :

"11. Even if the Labour Court did not have the jurisdiction or was not right in review the order dated 3rd April, 1980, the question would still arise that if in law the conclusion arrived at by the labour court in its order dated 25th November, 1985 is incorrect, then should this court, in exercise of its jurisdiction under Article 226 of the Constitution, interfere with such an order. In this connection, reference may be made to the decision of a Division Bench of this Court in LPA No.56 of 1978, Maya Sharma v. Management of Mother's International School. In that case, the services of a teacher had been terminated. The teacher had filed an appeal to the Delhi School Tribunal. The Delhi School Tribunal upheld the contention of the teacher and came to the conclusion that her services had been wrongly terminated. In a petition being filed in this court, it was held that the appeal to the Delhi School Tribunal by the teacher was not maintainable. Nevertheless, the Division Bench came to the conclusion that a writ court ought not to exercise its discretion in setting aside a fair and a just order, even if it is passed by a tribunal which had no jurisdiction to entertain the said appeal. To the same effect is a

decision of this court in civil writ no. 51 of 1978. The Management of Mother's International School and Anr. v. The Delhi School Tribunal & Ors. decided on 20th January, 1987, where, following the decision of the Division Bench in Maya Sharma's case, it was observed that a correct and fair order which is passed should not be set aside on a technical ground. In arriving at this conclusion, it was noted that the writ is not issued as a matter of right and a writ court may, in proper cases, not set aside the orders which may be technically bad in law as long as the orders which are passed are just, fair and proper. It is, therefore, necessary to see as to whether the order which was passed by the labour court on 25th November, 1985 to the effect that the management would not be permitted to lead evidence on any point except to prove ill health as being a reason for terminating the workman's service, is correct or not. "

In para 16 of the said judgment, it has been further observed as under:

"16. It is the management which knows the reason why the services of an employee are terminated. If it does not disclose the reasons to the Labour Court, then the Labour Court is obliged to find what the said reasons are. Once those reasons are known, principles of natural justice would require another opportunity being granted to the management to justify the existence of such reasons. Where, however, the reason for termination of the services is known, the question of the reason for termination being determined by the Labour Court would not arise and the only question which would arise would be to give an opportunity to the management to prove the existence of such a reason. In the present case, the reason for terminating the services is stated to be the continued ill health of the workman. This is the only reason why the termination order was passed. Therefore, the question of affording the petitioner opportunity to prove misconduct, which was not the reason for passing the order of termination, would not arise. The labour court was, therefore, right on merits, in order dated 25th November, 1985 when it came to the conclusion that the Management should not be given an opportunity to prove the charges of misconduct. As the decision of the

> labour court is right, fair and a just decision, I see no reason as to why I should interfere with the same, even if it was not proper for him to have reviewed the earlier order dated 3rd April, 1980."

Therefore, in view of the observations made by the Delhi High Court in the aforesaid decision, if the ultimate order passed by the labour court is just, fair and reasonable, then even though the labour court is not having jurisdiction to pass such order, this court may not interfere with such just, fair and reasonable order in exercise of the powers under Art.226/227 of the Constitution of India. Looking to the facts of the present case, as stated earlier, according to my opinion, labour court was having no jurisdiction to entertain the application of the respondent under sec. 25-T of the I.D. Act, 1947. However, since the ultimate order of the labour court is quite reasonable, just and fair, therefore, I am of the view that this court should not interfere with such order. I am also of the view that in ultimate order, the labour court has not decided the merits of the matter. The labour court has also not adjudicated any issue but has simply directed the petitioner State Authority to act in accordance with law and to protect the legal rights of the respondent workmen and not to adopt the unfair labour practice and to extend the benefits of the Government Resolution dated 17th October, 1988 if at all they are entitled for such benefits. In other words, whatever directions issued by the labour court are otherwise statutory obligation on the part of the State Authority. It is the duty of the State Authority to protect legal right, not to adopt unfair labour practice and if the workmen are entitled for any benefits of the aforesaid Government Resolution, same should be given to them. Thus, according to my opinion, the order passed by the labour court is fair, reasonable and just order and, therefore, no interference is necessary.

The second reason for not interfering with the order in question is that before the labour court, reply at Exh. 5 was filed by the petitioner wherein the averments made by the workmen in their application under section 25-T were denied but the contention about jurisdiction has not been taken. Before the labour court, except reply at Exh. 5, no other document has been produced by the petitioner. Contents of the affidavit at Exh.2 filed by the workmen were also not challenged by the petitioner by filing any counter affidavit. It is also necessary to note that even in

reply Exh. 5, the petitioner has not raised the question of jurisdiction. In short, the petitioner has not raised the contention about the maintainability of the application u/s. 25-T of the Act. Therefore, according to my opinion, when the petitioner has not raised any such specific contention as regards of the maintainability of such an application before the labour court, when the petitioner has also not made such submissions before the labour court at the time of hearing and has raised such contention for the first time before this court, the petitioner cannot be permitted to raise such contention for the first time before this court. Therefore, for this second reason also, according to my opinion, there is no necessity to interfere with the order passed by the labour court, in exercise of the extra ordinary powers under Article 226/227 of the Constitution of India. Therefore, this petition is required to be dismissed with costs.

For the reasons recorded hereinabove, this petition is dismissed. Rule is discharged. Ad-interim relief granted earlier shall stand vacated. There shall be no order as to costs.

25.10.2002. (H.K. Rathod,J.)
Vyas